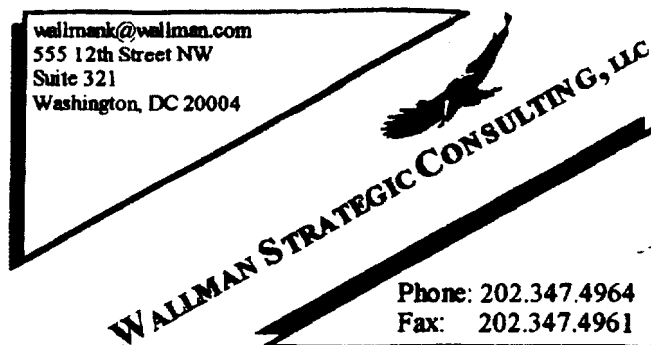


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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



John E. Logan

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November 9, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Submission
Forum on Submarine Cable Landing Licenses
DA 99-2148

Dear Ms. Salas:

On November 8, 1999, John B. Muleta, Vice President, PSINet, Inc. participated in a forum addressing Submarine Cable Landing Licenses sponsored by the International Bureau. At the forum the attached presentation was submitted to the Bureau staff. We are enclosing the necessary copies and request that the presentation be made part of the record of this proceeding.

The necessary copies are enclosed.

Respectfully,

John E. Logan
John E. Logan

Attachment

No. of Copies rec'd 2
List A B C D E

Copies Provided To:

**Donald Abelson
Chief, International Bureau**

**Douglas Webbink
Chief Economist
International Bureau**

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Chief, Telecommunications Division
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**Patrick DeGraba
Deputy Chief Economist**

**Federal Communications Commission
International Bureau
Public Forum on Submarine Cable Licenses
November 8, 1998 DA 99-2148**

**Statement of
John B. Muleta, Vice President
PSINet, Inc.**

PSINet is a world leader in IP-based communications services dedicated to the needs of corporate and institutional users. PSINet has committed substantial investment and has consciously optimized its network for Internet applications through construction of an infrastructure that demands performance, speed, and reliability in Internet connectivity and security services. Access to submarine cables providing sufficient capacity is critical to PSINet's commitment to its customers and its further expansion worldwide.

PSINet has pursued and activated transatlantic and transpacific fiber capacity to the degree it was the first ISP to own and operate a continuous high-speed data network linking North America, Europe, and the Asia-Pacific region. PSINet's international network fully circles the globe. PSINet plans to continue to purchase fiber in strategic locations that will supplement its existing backbone and complement its acquisition strategy. PSINet's global capabilities now serve over 70,000 business accounts and maintain a presence in 16 of the top 20 telecom markets worldwide. Nearly one-quarter of PSINet's customer base now comes from outside the United States. By the end of this year, about half of all Internet users will be located outside the United States.

PSINet approaches the submarine cable market in the same way it views all telecommunications markets. Competitive markets are the most efficient means to deliver new and better services at lower prices to the consumer. Open markets are critical to ensuring that investments of companies like PSINet contribute to the growth and progress that are fundamental to the Commission's goals. We seek capacity on the terms and conditions that best accrue to PSINet and its customers and only markets approaching competition provide the widest and best opportunities.

The Commission's review of this area is commendable. PSINet continues to experience circumstances in particular areas where the demand for capacity on submarine cable exceeds the capacity available. PSINet embraces fully the goal of moving toward broader competition in the submarine cable market.

Moving toward a broader competitive environment in submarine cable capacity is beset by several challenges. Foremost is the enormous investment required to construct and operate an undersea cable. The size of the investment reflects a high risk and high cost venture. Another element is the finite and small number of construction companies

with the expertise and capability to build the cable. What results is that the investment and commitment to build additional capacity lag behind the retail demand for service.

Contrary to assertions made to the Commission, it is not the structure or make-up of the entity constructing and operating a submarine cable that should be the premise of review and inquiry. The enormous investment required and the varying strategies of entities seeking to acquire capacity belie focusing on only one of several means to acquire access to transmission capacity. There are sound and fully justifiable reasons to seek equity arrangements instead of simply being a customer on an entity's submarine cable. One particular structure is not the sole source of bottleneck control and the dangers that may emerge from such control.

The real inquiry should be where demand exceeds capacity and what actions should be made during the not insignificant interim it takes the market to respond and increase capacity. The perils of bottleneck control are as likely to emerge where the submarine cable is owned or controlled by one entity as where it is owned by a consortium of providers seeking capacity. If the goal of the Commission under the Cable Landing Licensing Act is to assure just and reasonable rates and service and to promote expansion of capacity, any environment where demand exceeds capacity is deserving of review.

The Commission should examine the parameters of common carrier versus non-common carrier status, involving either consortium applicants or single entities, when demand exceeds capacity and will continue so for some time in the future. The inquiry should go further than determining the presence of alternative facilities. The extent of capacity the alternative facilities afford is the critical inquiry. There are significant responsibilities accompanying the common carrier designation, including which obligations are encompassed as well as providing incentives to expansion. Yet, if the bottleneck environment is likely to be present for some duration, and that environment stifles innovation and choice, it is not enough to rely on the presence of an alternate facility if that facility has no real capability to respond.

Any review of submarine cable licenses should be an overall examination and not one focused on a particular license. The Commission should avoid circumstances where a range of broad issues are examined in the context of an individual license, for what will transpire is inaction effectively rendering a negative decision. Delay is frequently a much greater detriment to investment and growth. Submarine cable matters are but one element of seeking to open telecommunications markets worldwide. PSINet is committed to assisting the Commission in any way possible.